



(Billing Code 7510-13)

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1823 and 1852

RIN 2700-AE16

NASA FAR Supplement: Safety and Health Measures and Mishap Reporting

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: NASA is issuing a final rule to amend the NASA FAR Supplement (NFS) to revise a clause related to safety and health measures and mishaps reporting, reduce burden on contractors, and to provide guidance on specific safety and health measures that the contractor must take when working on a Federal facility, and the remedies the Government may take for failure to maintain an effective safety and health program. The revision is part of NASA's retrospective plan under Executive Order (EO) 13563 completed in August 2011.

DATES: Effective: **[Insert date 30 days after publication in the FEDERAL REGISTER.]**

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SUPPLEMENTARY INFORMATION:

I. Background

NASA published a proposed rule in the Federal Register at 80 FR 48284 on August 12, 2015, to revise both the prescription for and text of the clause at 1852.223-70, which was retitled from "Safety and Health" to ``Safety and Health Measures and Mishap Reporting" to emphasize the purpose of the clause--requiring contractors working at Federal facilities to have measures in place to protect the safety of their workers, other individuals working at the facility, and the public. To reduce the burden on contractors, the clause prescription was revised to require it in solicitations and contracts above the simplified action threshold and to require it only for contracts involving performance at a Federal facility. The applicability to subcontracts was also revised to apply to subcontracts above the simplified acquisition threshold where performance is at a Federal facility.

Paragraph (b) of the clause lists safety and occupational health measures, recognized by the Office of Safety and Health Administration and industry, as standards for both identifying workplace hazards and for developing a plan for prevention and control of those hazards. These measures include maintaining an effective worksite safety and health program with organized and systematic methods to--

1. Comply with Federal, State, and local safety and occupational health laws and with the safety and occupational health requirements of the contract;

2. Describe and assign the responsibilities of managers, supervisors, and employees;

3. Inspect regularly for and identify, evaluate, prevent, and control hazards;

4. Orient and train employees to eliminate or avoid hazards; and

5. Periodically review the program's effectiveness.

Additionally, paragraph (b) added text concerning authorized Government representatives' rights to have access to and to examine the work site and related records under the contract in order to determine the adequacy of the Contractor's safety and occupational health measures. Paragraph (d) refers to NASA Procedural Requirement (NPR) 8621.1, Mishap and Close Call Reporting, Investigating, and Recordkeeping, which contains a listing and description of the types of mishaps (types A, B, C, or D) or close calls the contractor must report to the contracting officer. Paragraph (e) requires contractors to cooperate with any Government-authorized investigation by providing access to their employees and relevant information in their possession regarding the mishap or close call. Paragraph (f) states the Contracting Officer may notify the Contractor of

any noncompliance with the health and safety requirements of the contract and require corrective action. If the contractor fails or refuses to take prompt corrective action, the Contracting Officer may—

(1) Invoke the stop-work order clause;

(2) Require the Contractor to remove and replace Contractor or subcontractor personnel who fail to comply with or violate applicable requirements;

(3) Record the Contractor's failure to comply in the appropriate databases of past performance; and

(4) Consider the Contractor's failure to comply in any responsibility determination or evaluation of past performance. Paragraph (g) requires the prime contractor to include the clause in subcontracts over the simplified acquisition threshold when the work will be conducted completely or partly on federally-controlled facilities.

II. Discussion and Analysis

No public comments were received in response to the proposed rule. However, during internal deliberations a couple of minor changes were made. Section 1801.106(1) was revised to add new OMB control number 2700-1060, which was assigned for reporting requirements at NFS 1852.223-70. Additionally, paragraph (f)(1) of 1852.223-70 was revised to change the phrase "the Contracting Officer shall" to "the Contracting Officer will" and to remove

the term "any necessary." Paragraph (f) (2) was revised to remove "in addition to other remedies available to the Government" and add "the contracting officer may" with a list of four actions, previously listed in the proposed rule, enumerated and rephrased to clearly list the action to be taken: "invoke," "require," "record," and "consider." No other revisions were made to the proposed rule.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

NASA has prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., and is summarized as follows:

This rule revises NFS clause 1852.223-70 to reduce burden on contractors by (1) changing the applicability of the clause to only contracts over the simplified acquisition threshold and to only those performed on Federal facilities, and (2) by removing reporting requirements relating to mishap investigations and health and safety plans. The clause also provides guidance on specific safety and health measures the contractor must take when working on a Federal facility, and the remedies the Government may take for failure to maintain an effective safety and health program.

No comments were received on the initial regulatory flexibility analysis from small business concerns or other interested parties.

This rule will apply to small entities performing NASA contracts with an estimated value over the simplified acquisition threshold on Federal Facilities. The System for Award Management (SAM) data shows approximately 154 firms received contracts to which this clause will apply. Of those 154 firms, 84 were small businesses.

Two reporting requirements are contained in the rule. One is to notify the contracting officer of mishaps (types A, B, C, or D) or close calls as described in NASA Procedural Requirement (NPR)

8621.1, Mishap and Close Call Reporting, Investigating, and Recordkeeping. The other is to provide a quarterly report on the number of mishaps, specifying lost time frequency rate, number of lost time injuries, exposure, and accident/incident dollar losses. This information is collected so that NASA can analyze mishap data to look for mishap trends and determine ways to improve the safety of its workforce and high-value assets and reduce the risk to its missions. This mishap information would be initially collected by a company manager or supervisor. It may be reviewed by the firm's official responsible for safety, usually an occupational health and safety. Lost time frequency rate, number of lost time injuries, exposure, and accident/incident dollar losses reports would be prepared by a safety official.

The revisions to NFS clause 1852.223-70 are designed to reduce burden on contractors by reducing the applicability of the clause and reducing the paperwork burden. The information requested in the clause is essential to the NASA health and safety program.

Further and differing compliance alternatives or reporting requirements or timetables for small entities are not feasible. Having an effective safety program is crucial to all businesses as it reduces injuries, lost time, property damage and creates a more safe and effective workplace for employees.

V. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget

under the Paperwork Reduction Act (44 U.S.C. chapter 35). OMB has cleared this information collection requirement under OMB Control Number 2700-0160, titled: Safety and Health Measures and Mishap Reporting.

List of Subjects in 48 CFR 1801, 1823, and 1852

Government procurement.

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Accordingly, 48 CFR parts 1801, 1823 and 1852 are amended as follows:

PART 1801—FEDERAL ACQUISITION REGULATIONS SYSTEM

1. The authority citation for part 1801 is revised to read as follows:

Authority: 51 U.S.C. sec. 20113(a) and 48 CFR chapter 1.

2. Section 1801.106 is revised to read as follows:

1801.106 OMB approval under the Paperwork Reduction Act.

(1) *NFS requirements.* The following OMB control numbers apply:

NFS segment	OMB Control No.
1823	2700-0089
1852.223-70	2700-0160

1827	2700-0052
1843	2700-0054
NF 533	2700-0003
NF 1018	2700-0017

PART 1823—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

3. The authority citation for part 1823 is revised to read as follows:

Authority: 51 U.S.C. sec. 20113(a) and 48 CFR chapter 1.

4. Amend section 1823.7001 by revising paragraphs (a) and (b) to read as follows:

1823.7001 NASA solicitation provisions and contract clauses.

(a) Insert the clause at 1852.223-70, Safety and Health Measures and Mishap Reporting, in solicitations and contracts above the simplified acquisition threshold when the work will be conducted completely or partly on federally-controlled facilities.

(b) The clause prescribed in paragraph (a) of this section may be excluded with the approval of the installation

official(s) responsible for matters of safety and occupational health.

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PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. The authority citation for part 1852 continues to read as follows:

Authority: 51 U.S.C. 20113(a) and 48 CFR chapter 1.

1852.2 [Amended]

6. Amend subpart 1852.2 by removing “1852.223-70 Safety and health” and adding “1852.223-70 Safety and Health Measures and Mishap Reporting” in its place.

7. Revise section 1852.223-70 to read as follows:

1852.223-70 Safety and Health Measures and Mishap Reporting.

As prescribed in 1823.7001(a), insert the following clause:

SAFETY AND HEALTH MEASURES AND MISHAP REPORTING

([INSERT ABBREVIATED MONTH AND YEAR 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER])

(a) Safety is the freedom from those conditions that can cause death, injury, occupational illness, damage to or loss of equipment or property, or damage to the environment. NASA’s safety priority is to protect: (1) the public, (2) astronauts and pilots, (3) the NASA workforce (including contractor

employees working on NASA contracts), and (4) high-value equipment and property.

(b) The Contractor shall take all reasonable safety and occupational health measures in performing this contract. The Contractor shall maintain an effective worksite safety and health program with organized and systematic methods to—

(1) Comply with Federal, State, and local safety and occupational health laws and with the safety and occupational health requirements of this contract;

(2) Describe and assign the responsibilities of managers, supervisors, and employees;

(3) Inspect regularly for and identify, evaluate, prevent, and control hazards;

(4) Orient and train employees to eliminate or avoid hazards; and

(5) Periodically review the program's effectiveness. Authorized Government representatives shall have access to and the right to examine the work site and related records under this Contract in order to determine the adequacy of the Contractor's safety and occupational health measures.

(c) The Contractor shall take, or cause to be taken, any other safety, and occupational health—measures the Contracting Officer may reasonably direct. To the extent that the Contractor may be entitled to an equitable adjustment for those

measures under the terms and conditions of this contract, the equitable adjustment shall be determined pursuant to the procedures of the changes clause of this contract; provided, that no adjustment shall be made under this Safety and Health clause for any change for which an equitable adjustment is expressly provided under any other clause of the contract.

(d) The Contractor shall immediately notify the Contracting Officer or a designee any Type A, B, C, or D Mishap, or close calls as defined in NASA Procedural Requirement (NPR) 8621.1, Mishap and Close Call Reporting, Investigating, and Recordkeeping. In addition, service contractors (excluding construction contracts) shall provide quarterly reports specifying lost-time frequency rate, number of lost-time injuries, exposure, and accident/incident dollar losses as specified in the contract Schedule.

(e) The Contractor shall cooperate with any Government-authorized investigation of Type A, B, C, or D Mishaps, or Close Calls reported pursuant to paragraph (d) of this clause by providing access to employees; and relevant information in the possession of the Contractor regarding the mishap or close call.

(f)(1) The Contracting Officer may notify the Contractor of any noncompliance with this clause and specify corrective actions to be taken. When the Contracting Officer becomes aware of noncompliance that may pose a serious or imminent danger to

safety and health of the public, astronauts and pilots, the NASA workforce (including contractor employees working on NASA contracts), or high value mission critical equipment or property, the Contracting Officer will notify the Contractor orally, with written confirmation. The Contractor shall promptly take corrective action.

(2) If the Contractor fails or refuses to institute prompt corrective action in accordance with subparagraph (f)(1) of this clause, the Contracting Officer may—

- (i) Invoke the stop-work order clause in this contract;
- (ii) Require the Contractor to remove and replace Contractor or subcontractor personnel who fail to comply with or violate applicable requirements of this clause;
- (iii) Record the Contractor's failure to comply in the appropriate databases of past performance; and
- (iv) Consider the Contractor's failure to comply in any responsibility determination or evaluation of past performance.

(g) The Contractor shall insert the substance of this clause, including this paragraph (g) in all subcontracts above the simplified acquisition threshold when the work will be conducted completely or partly on federally-controlled facilities.

(End of clause)